

## LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

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**P.A.S.:** CZ#3366, Misc.#02005

**DATE:** June 18, 2002  
Revised September 5, 2002

Note: This is a combined staff report for related items. This report contains a single background and analysis section for all items.

### **PROPOSAL:**

Change of Zone #3366: Amendment to Zoning Ordinance  
Adopt provisions to provide for Impact Fees

Misc #02005: Amendment to Subdivision Ordinance  
Amend bike trail easement width from 14 to 20 feet  
Clarify reference to Comprehensive Plan  
Provide for dedication of park land

**CONCLUSION: The proposed Impact Fee Ordinance and amendment to the subdivision ordinance is in conformance with the 2025 Comprehensive Plan and could help provide for growth and development of the community. The proposed system is one part of an overall strategy that could provide adequate resources to maintain existing infrastructure and protect property values in the community. Impact fees provide for uniformity and equity among property owners and like land uses.**

<b>RECOMMENDATION:</b>
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Approval of Ordinance as Revised
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### **LEGAL DESCRIPTION:**

Zoning Code – amend to add the following sections to provide for :

27.82.010 a title, authority and applicability;  
27.82.020 legislative findings and purpose; 27.82.030 to provide intent;  
27.82.040 definitions;  
27.82.050 imposition of impact fees;  
27.82.060 exemptions from impact fees;  
27.82.070 creation of an impact fee fund and impact fee accounts;  
27.82.080 refunds of impact fees paid;  
27.82.090 Post-Ordinance developer agreements regarding impact fee facilities;  
27.82.100 Pre-Ordinance developer reimbursement for participation in financing or constructing impact fee facilities;  
27.82.110 miscellaneous provisions.

Land Subdivision Ordinance – to amend the following sections:

26.23.040 (Table 26.23.040) to modify the reference to the Comprehensive Plan and to increase the minimum right-of-way width for bikeways from a 14-foot easement to a 20-foot easement;

Section 26.23.160 to require a dedication of land or payment of an impact fee for neighborhood parks and trails; and to repeal Sections 26.23.040 and 26.23.160.

**APPLICANT:**

The Directors of Parks & Recreation, Planning, and Public Works & Utilities Departments

**CONTACT:**

Stephen Henrichsen  
Planning Department  
555 S. 10<sup>th</sup> Street  
Lincoln, Ne 68508  
Ph# 441-6374

Steve Masters  
Public Works & Utilities Department  
555 S. 10<sup>th</sup> Street  
Lincoln, Ne 68508  
Ph# 441-7588

**SUMMARY:**

After two years of public process and consideration of alternatives, several measures to improve the equity, predictability and amount of revenue for the financing of capital infrastructure costs are being forwarded. Impact fees are one part of the overall approach. The City's Infrastructure Financing Strategy provides a balance between costs fairly associated with new development being paid by new development, with some of these costs still being subsidized by the public as a whole through utility fees and taxes.

Under the current system the community as a whole is financing as much as 85 to 90% of the infrastructure costs to provide for new development. As the community grows, there are additional utilities, roads, trails and parks to build while also maintaining an aging infrastructure to serve existing neighborhoods. The goals of Comprehensive Plan encourage new development and project a 1.5 % growth rate coupled with a significant expansion in the City's land area over the next 25 years.

However, there is a significant gap between the costs associated with this growth and the amount of funds brought in under the current funding system. A shortage of nearly \$290 million is anticipated, if the current practice of paying for improvements is continued.

If the current system continues, there will not be adequate resources to provide for maintenance and new infrastructure to encourage development. Also, the present practice

of negotiating improvements on a case by case basis does not provide predictable costs and as is viewed by some as inequitable.

The proposed impact fee is to be paid at time of building permit. Any fees paid by a builder are ultimately paid by the property owner. Impact fees collected for arterial streets, water, wastewater and parks/trails are deposited in a separate account. These funds could then be used only for new construction. For example, water impact fees can only be used for new water improvements, such as major water lines, reservoirs, pumping stations and water treatment.

For arterial streets and parks/trails it is proposed that the city be divided into four **benefit areas**. Each benefit area would have a separate account and fees collected in the benefit area could only be used for new construction in that area. A single city wide benefit area is proposed for water and sewer impact fees. Impact fees would have to be spent within a 10 year time period. Impact fee accounts would be audited annually as well.

Impact fees are paid only collected on new construction. The fee would only be collected for an entirely new dwelling, not for additions to or remodeling of existing homes. Likewise, new houses that are replacing a previously existing dwelling, there would be no fee. For businesses, it would apply to any additions, expansions and new buildings, with a credit for the floor area of a previous business being replaced.

## **HISTORY: Summary of public process**

### 2000

June 20	Press Conference on hiring of Duncan Associates and beginning of Infrastructure Financing Study (IFS) process
July	City Council, County Board and Mayor appoint members to IFS Advisory Committee (IFSAC)
August 15	First IFSAC meeting
August 31	First Public Presentation: Review All Financing Alternatives (presentation taped and run on 5 City TV)
Sept.	IFSAC meetings, FINANCIAL ALTERNATIVES and CAPITAL COST OF GROWTH reports released
Oct 11	IFSAC meetings and briefings for groups including Mayor's Neighborhood Roundtable and Home Builders Association of Lincoln (HBAL)
Oct. 19	IFSAC Public Forum at Council Chambers

Nov. IFSAC meetings and briefings of groups including Lincoln Independent Business Association (LIBA). FISCAL IMPACT ANALYSIS report released

Nov. 16 IFSAC public forum at Gere Library

Dec. IFSAC meetings and briefings of City Council and Mayor's Neighborhood Roundtable briefing

**2001**

Jan 8. Final IFSAC meeting and Final Report completed

Feb. Lincoln Journal Star article on IFS proposal and City Council briefing

Sept. 26 Discussion with Lincoln Chamber of Commerce (LCC) Infrastructure subcommittee

Oct. Briefings and discussion at meetings of Mayor's Neighborhood Roundtable, HBAL, Lincoln Chamber of Commerce(LCC), LIBA, Realtors Association of Lincoln (RAL)

Nov. Joint meeting with HBAL, LCC, LIBA & RAL

Dec. Joint Meeting with HBAL, LCC, LIBA & RAL

**2002**

Feb -Mar. Additional discussion with members of organizations

Mar. 19 Public Forum at Lux Middle School (presentation taped on replayed on 5 City TV)

Mar. 19 Revised Capital Cost of Construction report (IMPACTFEE STUDY) released

April - May Discussion with representatives from neighborhood organizations, HBAL, LCC, LIBA & RAL, Lincoln Housing Authority, Habitat for Humanity and Housing Resources Inc., Downtown Lincoln Association

May 28 Adoption of 2025 Comprehensive Plan by City Council and County Board with new section on Financial Resources

June - Aug. Numerous meetings held with various neighborhood, civic, housing, and business organizations to discuss options and potential changes in the proposal.

August 22     Fair Share Alliance held a public forum at Auld Recreation Center

August 26     City Council briefing and distribution of revised ordinance, overall financing strategy and first release of proposed impact fee schedule

Letters in support of impact fees and the overall Infrastructure Financing Strategy have been received from the Meadowlane Area Residents Association, the Arnold Heights Neighborhood Association, Clinton Neighborhood, East Campus Community Organization, Hartley Neighborhood, Hawley Area Neighborhood, Landons Neighborhood, Near South Neighborhood, North Bottoms Neighborhood, the University Place Community Organization and others.

### **COMPREHENSIVE PLAN SPECIFICATIONS:**

These proposals are in conformance with the new 2025 Comprehensive Plan. Selected pertinent sections from the Plan include:

The pertinent principles in regards to impact fees include:

#### **“Guiding Principles**

In order to meet the goals of financing new improvements and maintaining the built environment, the following principles are identified:

#### **Overall Guiding Principles**

There needs to be a balance between new infrastructure in developing areas and the improvements and maintenance needs of the existing community. Funding for infrastructure improvements should not focus all of the funds into developing areas, leaving inadequate resources to address needs in other areas. The City and County need to adequately fund infrastructure maintenance and improvements in existing towns and neighborhoods.

The City and the County will work cooperatively in as many areas possible in order to provide services in the most efficient manner possible.” (Page F 159)

#### **“Guiding Principles for Financing Urban Infrastructure**

**A Balanced Approach:** The community at large should provide more financing of maintenance and improvements in existing areas. Both new and existing development should pay its fair share of improvement costs due to growth and maintenance. In general, improvements which are of general benefit to the whole community should be paid by the community while improvements which are of special benefit to a specific area should be paid by that area.

**Develop a Fair & Predictable System:** Distribute infrastructure costs fairly among all property owners who benefit from the improvements. The goal of the financing system is that costs should be known in advance of development.

**Conformance with Comprehensive Plan:** Infrastructure improvements should continue to be developed only in areas identified for development in the Lincoln/Lancaster County Comprehensive Plan. One of the most important tools in financing is adherence to the physical plan for the community. Following the Plan for development and systematic improvements throughout Lincoln increases efficiency in construction and maximizes the community's investment.

**Conformance with Capital Improvement Program (CIP):** The CIP should be utilized to provide a systematic and predictable forum for determining the timing of infrastructure improvements.

**Greater Development Efficiency:** Maximize the community's investment in infrastructure through greater efficiency in residential and commercial development. Particularly in new development, an increase in the amount of commercial floor area and residential population, compared to typical suburban patterns, will decrease the amount of infrastructure necessary overall in the community.

**Use an Appropriate Financing Method for Each Infrastructure Need:** One method of financing may not be appropriate for all types of infrastructure needs.

**Minimize Impact on Affordable Housing:** Infrastructure financing should not increase the cost of affordable housing in Lincoln and the City should encourage retention of affordable new housing in existing neighborhoods.

**Minimize Impact on Those Who Are Not Developing Land:** As much as possible, property owners should only be assessed or pay the improvement costs at the time they seek approval of development proposals or building permits. Financing mechanism should not impact property owners in an area under development who don't want to develop their land at that time. The community should grow in an orderly compact fashion and therefore infrastructure improvements should be made in a timely manner. Property owners need to be educated about the growth and infrastructure plans to reduce the elements of surprise and anger and to foster more informed personal planning decisions.

**Increase the Amount of Revenue:** Property owners should participate in funding improvements in new areas at generally the same rate. Today, some new developments pay a lot for improvements while others sometimes pay nothing. In the future, all new developments should pay at generally the same level.

**Build More Improvements Sooner:** The City should attempt to build more road, water and wastewater improvements each year, without an adverse impact on property taxes. Accelerating improvements will require millions of more dollars and should only be done if new financial resources and alternative financing techniques have been implemented.

The goal is to find the means in order build 25 years worth of improvements over a 20 year period in order to ensure the well-timed delivery of urban infrastructure. The Plan Realization section further describes the mechanisms that will link urban infrastructure programming to local market and growth conditions. It is important that there be adequate funds for the maintenance of infrastructure in the existing urban area as future growth occurs.

**Concurrent Improvements:** Infrastructure improvements should be made concurrent with development. Except in limited cases, such improvements should not be made in advance of development proposals in an area. There should be adequate infrastructure in place every year to accommodate housing and employment demands.

**Timing:** As projects are requested for faster implementation by a developer than are identified in the City's Capital Improvement Plan and the County 1 and 6 Program, the developer must be prepared to make financial contributions to improvements necessitated by a project if their project is moved to an earlier date.

**Encourage Efficiency:** There should be further cooperation between the public and private sector and long range planning efforts to save on the City's development costs that could be used for infrastructure improvements." (Pages F 160 -161)

The strategies section then lists the different suggested mechanisms to meeting these principles. Impact fees is specifically stated in the following (connection fees referenced below are same as impact fees):

**"Water & Wastewater**

The Community should establish a balanced system of financing improvements that uses both connection fees paid by new construction and utility fees paid by rate payers throughout the city.

Establish a connection fee in newly developing areas, to be paid at time of building permit, to recover a portion of the capital costs to build trunk sewer lines and water mains. The fee should not significantly impact housing costs and could be less regressive if smaller lots paid less for the water connection fee. The connection fee should be paid by residential, commercial, industrial and public/semi-public uses." (Page F 161-162)

### “Arterial Streets

The Community should establish a balanced system of financing improvements that uses both impact fees paid by new construction, wheel taxes paid by rate payers throughout the city and state and federal funds.

Establish an impact fee at time of building permit for road improvement costs in developing areas. Fees should not be at full capital recovery cost for residential uses. Large traffic generators, like commercial and industrial businesses, will pay a majority of the costs due to their traffic impact. Some mechanism should be employed so that the road impact fee does not impact affordable housing.” (Page F 162)

### “Parks and Trails

The Community should establish a balanced system of financing improvements that uses both impact fees and land dedication paid by new construction with general revenue taxes paid by the community as a whole.

Establish a mandatory park land and trail dedication requirement for residential plats. Establish a park and trail impact fee that can be paid in-lieu of land dedication.” (Page F 162)

## ANALYSIS:

The City with Duncan Associates has completed a study of the capital costs of providing water, wastewater, arterial streets and neighborhood parks and trails for new development. This study looked at the improvements needed and what infrastructure capacity was needed by new development. For example, the study identified how much water treatment capacity was needed per new dwelling unit or business. For arterial streets, it identified the number of new automobile trips generated by different land uses. Table 1 lists the capital cost for new construction based on the updated Impact Fee Study.

**Table 1**  
**Capital Cost of Construction – Updated June 1, 2002**

Facility	Arterial Streets	Water	Waste-water	Parks & Trails	Total
Single Family Dwelling Unit	\$3,235	\$3,669	\$1,815	\$321	\$9,040
Multi-Family Per Dwelling Unit	\$1,964	\$611	\$302	\$190	\$3,068
Retail Store 10,000 square feet	\$40,770	\$3,910	\$1,940	n/a	\$46,620



Office Building 10,000 square feet	\$47,690	\$3,910	\$1,940	n/a	\$53,540
Industrial Use 10,000 square feet	\$29,170	\$3,910	\$1,940	n/a	\$35,020

**Note: see June 1, 2002 draft Impact Fee Study for details. Multi-family assumes 6" meter for 200 unit apartment complex; nonresidential assumes 3" meter for a 100,000 sq. ft. building.**

The first calculation of the capital costs of construction was concluded in September 2000. These costs were then reviewed and revised to create the draft Impact Fee Study in March 2002. Both of these studies were reviewed by engineers and others in private sector. While suggested changes improved the analysis, they did not change the findings that the typical single family home requires a net cost of approximately \$9,000 in order to provide water, wastewater, arterial streets and neighborhood parks/ trails.

Some have suggested that the costs calculations are too high because they include the costs to provide water and wastewater treatment, water storage, water pumps and the water transmission main from Ashland. While these costs have traditionally been paid for by the community as whole, they are none the less part of the capital cost providing for a new single family home. If the community were not expanding, then additional treatment, storage, pumps and transmission lines would not be necessary.

For arterial streets, some have suggested the costs set a new standard since they include median landscaping, dual turn lanes and traffic signals. Many new arterial streets include median landscaping (S. 40<sup>th</sup> and 70<sup>th</sup> Street as an example) dual left turn lanes (27<sup>th</sup> & Pine Lake Road or 27<sup>th</sup> & Superior) or additional traffic signals (numerous locations along 84<sup>th</sup> Street or Pine Lake Road.) The City also estimates that about one in four new miles of arterial streets will include a bike lane, such as is found along portions of 70<sup>th</sup> Street, 84<sup>th</sup> Street and Pine Lake Road.

The impact fee ordinance includes a new **arterial street impact fee** which would be paid by new construction at time of building permit. The fee would vary based on the number of automobile trips a use generated. Thus, a new 10,000 square feet retail or office building would pay a significantly higher fee than a single family house. Impact fees can only be used for new construction -- they could not be used for maintenance. In new areas, developers could wait for the city to build arterial street improvements through the capital improvement process or improve the arterial street themselves and receive reimbursement from impact fees paid ~~a credit against the arterial street impact fees to be paid within their development~~ for the value of their improvement. The revised proposed ordinance changes the system of credits to direct reimbursement of the developer. This simplifies the process for realtors and builders in that they will not have to keep track of which lots have a credit and how much is the credit.

**Water and wastewater impact fees** would be paid at time of building permit by any new construction. The amount of the fee would depend on the size of the water meter. The greater the impact on the water and wastewater system, the larger the fee. Thus larger water users who require larger meters would pay more. Increases in meter size needed due to a fire sprinkler system would not increase the fee. The fee is based on the water meter capacity needed for typical daily use.

Impact fees would not apply to residential remodels or additions, since they don't increase the demand on the system and typically don't increase the size of the water meter. However, any change in meter size due to a lawn irrigation system would not be exempt from the fee.

A water and wastewater impact fee is a more equitable and predictable way to determine the appropriate amount that new development should contribute to improvement costs. It ensures that all property being developed contributes equally per dwelling unit or per square feet of commercial/industrial use.

The water and wastewater impact fees if phased in over a period of years would only cover a portion of the total capital costs. The remaining costs would be paid through utility rates by the citizens as a whole.

**A Neighborhood Park and Trail Impact Fee** in the zoning ordinance and a new mandatory **park land dedication** in the subdivision ordinance are proposed. In addition, the proposed changes to the subdivision ordinance would correct the trail easement width from 14 to 20 feet and clarify the reference to the Comprehensive Plan for right-of-way dedication. The neighborhood park and trail impact fee would be used for park improvements, trail paving or acquisition of land where the mandatory park land dedication did not provide for adequate space. Residents of Lincoln would continue to develop larger size parks and recreational facilities through general obligation bonds and other funds.

**Other Alternatives:** Beginning in the summer of 2000, many different alternatives were reviewed. The alternative most often suggested is to use some type of special assessment district. Assessment Districts typically rely on the city making the improvement, then assessing adjacent property owners over a 15 to 20 year period their share of the cost plus interest. This tool could be used in some circumstances to make a local road or utility improvements in which there is multiple property owners. However, assessment districts are not suitable for large areas and significant improvements for the following reasons:

- a. State statutes prohibits their use outside of the city limits, thus they are of minimal use in developing areas. It is not advantageous to the property owners nor the City to annex vast areas for purposes of assessment.

- b. Assessment districts are not predictable, they rely on approval of the City Council and may be opposed by property owners in the area.
- c. District funding relies on the city to have significant funds on hand to be able to finance the improvements in advance of repayment over 15 to 20 years.

——— Collection of assessments is less certain and may be limited if property owners default on paying assessments. Failure to pay an assessment becomes a lien which may not be able to be collected until the property is sold.

- d. Assessments could be levied against those not needing or requesting improvements such as churches or acreage owners who may already be served by suitable well and septic service. The Comprehensive Plan states **“Minimize Impact on Those Who Are Not Developing Land.”**

Another alternative for water and wastewater is to collect a fee of \$500 or some amount per water connection. However, a “flat” fee approach treats a single family use the same as a high water intensive use, such as some industrial uses.

~~The final details of the impact fee schedule and the overall infrastructure financing strategy are still under discussion and have not yet been concluded. Fee schedules and utility rates are items directly forwarded to the City Council for review and action.~~

——— ~~Several groups have suggested adjustments to the impact fee ordinance. If the base ordinance is adopted by the City Council, then the Council could request additional enhancements to the ordinance be developed and forwarded for consideration. Some suggested changes include:~~

- a) ~~Reduce fees or remove redevelopment areas, such as Antelope Valley,~~
- b) ~~To reduce costs to low income housing,~~
- c) ~~Provisions to encourage mixed use developments, and~~
- d) ~~Downtown trip reduction due to mix of uses and pedestrian character.~~

As a result of discussion with many different groups over the past several months, the impact fee ordinance has been revised to include:

1. Providing for “category exemption” for Annexation Agreements approved prior to June 2002. Property within prior “annexation agreements” will be exempt from impact fees in each category that they contributed to these improvements. For example, if a developer agreed to contribute to some of the water and arterial street costs in an annexation agreements, then the property covered by that agreement would be exempt from water and arterial street impact fees. These annexation agreements contain approximately 8,000 unbuilt dwelling units and over 10 million square feet of unbuilt commercial and

industrial space. This represents an significant portion of the new construction for the next 5 to 10 years. Thus, this will significantly reduce any economic impact since fewer properties will be paying the full fee.

2. Impact Fees will begin **at \$2,500** per single family house and will be **phased in over five years to \$4,500**, with annual inflation for construction costs added. The fee schedule is substantially below the actual capital costs of these improvements. In addition, **implementation of impact fees would be delayed until June 1, 2003.**
3. A **Downtown/ Antelope Valley Arterial Street Exclusion area** for consideration. The Impact Fee Study was recalculated to determine the arterial street fee, excluding all the traffic capacity and land use in a specific area, generally 8<sup>th</sup> to 28<sup>th</sup> Street, from G Street to State Fair grounds and Salt Creek. The Comprehensive Plan encourages redevelopment and investment in the Downtown and Antelope Valley area. Excluding this area from paying arterial street impact fees would aid in attaining these goals. However, this also means that arterial street impact fees paid outside of this area could not be used for any street improvements inside the Downtown/ Antelope Valley area.

This proposal was added to the ordinance for the consideration of the community and groups interested in the Downtown and Antelope Valley. At this time, specific comments from interested groups or the community on this aspect have not yet been received.
4. A **redevelopment “credit bank”** for use in redevelopment areas. This change would allow for properties purchased by the city for demolition due to future road expansion or channel development, that the credit for the existing buildings be retained by the City for use within that same redevelopment area. For example, if a 10,000 square foot commercial building in the Antelope Valley area was purchased for demolition to make way for a new channel and park land, the City could use this commercial space as credit to reduce the impact fees of a new commercial building as part of a redevelopment agreement. This “bank” of credits would aid in the goals of the Comprehensive Plan of encouraging redevelopment.
5. Impact fees for rental and owner occupied **low income housing** for persons below 60% of median income would be exempted. Impact fees for new construction for dwellings with income between 60 and 80% would be reduced by half.

**CONCLUSION:**

The proposed impact fee ordinance and changes to the subdivision ordinance are in conformance with the Comprehensive Plan and could help provide for growth and development of the community. The proposed system is also one part of an overall strategy that could provide adequate resources to maintain existing infrastructure and protect property values in the community. Impact fees provide for uniformity and equity among property owners and like land uses. The impact fee system would take effort and adjustment to transition to the new system, but it would establish a better financing system.

Impact fees are an important part of the overall financing strategy. Without impact fees, the current system of negotiations, which is viewed as unpredictable and inequitable, would continue. Impact fees are part of an overall strategy which could increase revenue for improvements, with the increase in funds coming both from new development and the community as a whole.

Without impact fees, the community has few viable or desirable choices. One option would be to significantly raise wheel taxes and utility rates in order to provide for the adequate resources. However, this would place the vast majority of the burden on the community as a whole, which is not in keeping with the goals of the Comprehensive Plan to have a balanced approach. Another option is to do nothing, which would continue the current system and would ultimately provide inadequate resources for maintenance and new development — a future the community does not desire.

Impact fees would distribute costs among new developments in more fair, uniform and predictable manner than the current system. These costs would be balanced by increased costs for the community as a whole through some increases in utility rates. This new financing tool can help the community achieve growth goals while ensuring that the cost of growth is paid for in a fair and equitable manner.

Prepared by:

Stephen Henrichsen, AICP  
Principal Planner

## ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Title 27 of the Lincoln Municipal Code relating  
2 to zoning by adding a new section numbered 27.82.010 to provide a title, authority and  
3 applicability; adding a new section numbered 27.82.020 to provide legislative findings and  
4 purpose; adding a new section numbered 27.82.030 to provide intent; adding a new section  
5 numbered 27.82.040 to provide definitions; adding a new section numbered 27.82.050 to  
6 provide for imposition of impact fees; adding a new section numbered 27.82.060 to provide  
7 exemptions from impact fees; adding a new section numbered 27.82.070 to provide for the  
8 creation of an impact fee fund and impact fee accounts; adding a new section numbered  
9 27.82.080 to provide for refunds of impact fees paid; adding a new section numbered  
10 27.82.090 to provide for post-ordinance developer agreements regarding Impact Fee  
11 Facilities; adding a new section numbered 27.82.100 to provide for developer  
12 reimbursement for participation in financing or constructing Impact Fee Facilities; adding  
13 a new section numbered 27.82.110 to provide for miscellaneous provisions.

14 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

15 Section 1. That Title 27 of the Lincoln Municipal Code be amended by  
16 adding a new section numbered 27.82.010 to read as follows:

17 **27.82.010 Short Title, Authority and Applicability.**

18 (a) This ordinance may be known and cited as the "Impact Fee Ordinance," and  
19 is referred to herein as "this ordinance."

1 (b) This ordinance is enacted pursuant to the authority granted to the City by the  
2 Constitution of the State of Nebraska, the Nebraska revised statutes, and the City's home  
3 rule charter.

4 (c) The provisions of this ordinance shall apply to all of the territory within the  
5 corporate limits of the City.

6 Section 2. That Title 27 of the Lincoln Municipal Code be amended by  
7 adding a new section numbered 27.82.020 to read as follows:

8 **27.82.020. Legislative Findings and Purpose.**

9 The City Council of Lincoln, Nebraska finds that:

10 (a) Both population and employment within the City are growing, and are  
11 creating demands for new residential and nonresidential development.

12 (b) New development within the City is creating additional demand and need for  
13 public facilities, including water and wastewater systems, arterial streets, and  
14 neighborhood parks and trails.

15 (c) The protection of the health, safety, and general welfare of the citizens of the  
16 City requires that the public facilities of the City be expanded to meet the demand of new  
17 development for public facilities.

18 (d) Under the City's current laws, taxes, fees, utility charges, and other forms of  
19 revenue generated from new development do not generate sufficient funds to provide  
20 those public facilities required to serve the new development.

21 (e) It is only proper that those property owners who benefit by the expansion of  
22 public facilities for new development should bear the cost of that expansion.

1 (f) The creation of an equitable impact fee system would enable the City to  
2 impose a more proportionate share of the costs of required improvements to the water and  
3 wastewater systems, arterial streets, and neighborhood parks and trails on those  
4 developments that create the need for them.

5 (g) All types of development that are not explicitly exempted from the provisions  
6 of this ordinance will generate demand for the types of facilities for which impact fees are  
7 being imposed pursuant to this ordinance.

8 (h) The Impact Fee Study prepared by Duncan Associates dated June 2002 sets  
9 forth reasonable methodologies and analyses for determining the impacts of various types  
10 of development on the City's public facilities, and for determining the cost of acquiring land  
11 and the cost of acquiring or constructing facilities and equipment necessary to serve new  
12 development.

13 (i) The assumptions and service standards referenced in the Impact Fee Study  
14 are those used by the City in evaluating the need to expand or construct public facilities.

15 (j) The impact fees described in this ordinance are based on the Impact Fee  
16 Study, and do not exceed the costs of acquiring additional land and the costs of acquiring  
17 or constructing additional facilities or equipment required to serve the new developments  
18 that will pay the fees.

19 (k) The types of improvements to each type of public facility considered in the  
20 Impact Fee Study will benefit all new development in the City, and it is therefore  
21 appropriate to treat the entire City as a single service area for purposes of calculating the  
22 impact fees for each types of facility. However, the service area may be divided into



1 multiple benefit areas in order to show a greater link between fees paid and benefit  
2 received.

3 (l) It is in the public interest and consistent with the Comprehensive Plan and  
4 other public policies of the City to promote the construction and preservation of Low  
5 Income Housing.

6 (m) There is both a rational nexus and a rough proportionality between the  
7 development impacts created by each type of development covered by this ordinance and  
8 the impact fees that such development will be required to pay.

9 (n) This ordinance creates a system by which impact fees paid by new  
10 developments will be used to expand or improve the type of public facility for which the fee  
11 was paid, so that the new development that pays each fee will receive a corresponding  
12 benefit within a reasonable period of time after the fee is paid.

13 (o) This ordinance creates a system under which impact fees shall not be used  
14 to cure existing deficiencies in public facilities; nor used for their maintenance and  
15 operation.

16 Section 3. That Title 27 of the Lincoln Municipal Code be amended by  
17 adding a new section numbered 27.82.030 to read as follows:

18 **27.82.030 Intent.**

19 (a) The intent of this ordinance is to ensure that adequate water and wastewater  
20 systems, arterial streets, and parks and trails are available to serve new growth and  
21 development in the City of Lincoln and to regulate the use and development of land so as  
22 to ensure that new growth and development bears its proportionate share of the cost of

1 improvements to the City's water and wastewater systems, arterial streets, and  
2 neighborhood parks and trails needed to serve such new growth and development; to  
3 ensure that the proportionate share for each type of public facility does not exceed the cost  
4 of providing that type of public facility to the new development that paid the fee; and to  
5 ensure that funds collected from new developments are actually used to construct public  
6 facilities that benefit such new developments.

7 (b) It is not the intent of this ordinance to collect any money from any new  
8 development in excess of the actual amount necessary to offset demands generated by  
9 that new development for the type of public facility for which the fee was paid.

10 (c) It is not the intent of this ordinance that any monies collected from any impact  
11 fee and deposited in an impact fee account ever be co-mingled with monies from a  
12 different impact fee account or ever be used for a type of public facility different from that  
13 for which the fee was paid.

14 Section 4. That Title 27 of the Lincoln Municipal Code be amended by  
15 adding a new section numbered 27.82.040 to read as follows:

16 **27.82.040 Definitions.**

17 Unless the context specifically indicates otherwise, the meaning of terms used in  
18 this chapter shall be as follows:

19 **Building permit.** The City permit required to erect, construct, enlarge, alter, repair,  
20 remove, convert, or demolish any building, structure, swimming pool, or parking lot  
21 pursuant to the Lincoln Building Code.

1           **Connection.** The physical tie-in of a private water or wastewater service or system  
2 to the City's public water or wastewater system.

3           **Developer.** Any person or legal entity undertaking development.

4           **Development.** Any construction expansion or conversion of a building, structure  
5 or use which creates additional demand for Impact Fee Facilities, any change in use of a  
6 building or structure which creates additional demand for Impact Fee Facilities, or any  
7 change in the use of land, which creates additional demand for Impact Fee Facilities, or  
8 any connection to the City's public water or wastewater system which creates additional  
9 demand for Impact Fee Facilities.

10           **Downtown/Antelope Valley Exclusion Area.** The area Antelope Valley  
11 established on the Downtown Exclusion Area Map and more particularly described as  
12 follows:

13           **Duplex.** Shall have the same meaning as two-family dwelling, as defined in section  
14 27.03.200.

15           **Gross Floor Area.** The floor area within the inside perimeter of the exterior walls  
16 of the building under consideration, exclusive of vent shafts and courts, without deduction  
17 for corridors, stairways, closets, the thickness of interior walls, columns or other features.  
18 The floor area of a building, or portion thereof, not provided with surrounding exterior walls  
19 shall be the usable area under the horizontal projection of the roof or floor above. The  
20 gross floor area shall not include shafts with no openings or interior courts.

1           **Impact Fee Administrator.** The person or persons designated by the City to be  
2 responsible for administering this ordinance.

3           **Impact Fee Facility.** One or more elements of the City's water and wastewater  
4 systems, arterial streets, and neighborhood parks and trails included in the calculations of  
5 the impact fees in the Impact Fee Study.

6           **Impact Fee Facility Improvement.** Planning, land acquisition, engineering design,  
7 construction inspection, on-site construction, off-site construction, equipment purchases,  
8 and financing costs associated with new or expanded facilities, buildings, and equipment  
9 that expand the capacity of an Impact Fee Facility and that have an average useful life of  
10 at least fifteen (15) years, but not including maintenance, operations, or improvements that  
11 do not expand capacity.

12           **Impact Fee Study.** The Impact Fee Study prepared by Duncan Associates dated  
13 June 2002.

14           **Income Area, Low.**

15           **Income Area, Moderate.**

16           **Low Income Owner-Occupied Housing.** An owner-occupied unit, under local,  
17 state, or federal regulations, which is sold to a household whose income is 80% or less of  
18 the area median gross income adjusted for household size.

19           **Low Income Rental Housing.** A tenant-occupied unit which is rented to a  
20 household whose income is 80% or less of the median gross income adjusted for  
21 household size and which is rent restricted under local, state or federal regulations, to  
22 households whose income is 80% or less of the median gross income adjusted for size,

1 and which restrictions through means of a land use restriction agreement or similar legal  
2 document runs with the property for a period of at least fifteen years.

3 **Mobile home.** Shall be defined as in Section 27.03.430.

4 **Mobile home court.** The use of land for sites for mobile homes not located on  
5 individual platted lots.

6 **Multi-family.** Shall have the same meaning as multiple dwelling, as defined in  
7 Section 27.03.210, except that it excludes townhouses.

8 **Person** shall include a natural person, joint venture, joint stock company,  
9 partnership, association, club, company, corporation, business, trust, organization, or the  
10 manager, lessee, agent, servant, officer, or employee of any of them.

11 **Present Value.** The current value of past, present, or future payments,  
12 contributions or dedications of goods, materials, construction or money, taking into account  
13 when appropriate depreciation and inflation.

14 **Qualified Professional.** A professional engineer, surveyor, financial analyst or  
15 planner providing services within the scope his license, education, or experience.

16 **Single-family detached.** A single-family dwelling, as defined in Section 27.03.190,  
17 that is not attached to any other dwelling by any means and that is the only dwelling unit  
18 on the lot. This term shall include a mobile home located on a separately platted lot.

19 **Site-related improvements.** All site specific improvements primarily planned,  
20 designed, or built to provide necessary access and service to the proposed development,  
21 including all site driveways and local and collector streets leading only to the proposed  
22 development; all traffic control devices that primarily give access to the development;

1 acceleration/deceleration lanes and left-turn and right-turn lanes to allow turning  
2 movements into or out of the development from site driveways and local and collector  
3 streets.

4 **Tap.** The act of connecting to a public water main or public wastewater collector.

5 **Tap fee.** The permit fee required pursuant to Lincoln Municipal Code Section  
6 17.10.040 to cover the City's cost in making the tap and of furnishing the required supply  
7 connection, water meter with meter stops, and meter couplings, and other required meter  
8 apparatus.

9 **Townhouse.** Shall have the same meaning as townhouse, as defined in Section  
10 27.03.630.

11 Section 5. That Title 27 of the Lincoln Municipal Code be amended by  
12 adding a new section numbered 27.82.050 to read as follows:

13 **27.82.050 Imposition of Impact Fees.**

14 (a) Requirement. After the effective date of this ordinance, any person who  
15 applies for a building permit for a development or who applies for any other permit for a  
16 development where a building permit is not required, or who seeks to engage in a  
17 development for which no permit is required, shall pay a water impact fee, wastewater  
18 impact fee, arterial street impact fee, and neighborhood parks and trails impact fee unless  
19 the type of development described in the permit or to be engaged in is specifically  
20 exempted, waived or subsidized by this ordinance.

21 (b) Payment of Impact Fees. A person applying for any of the permits for a  
22 development listed in subsection (a) above shall pay each impact fee required by this

1 ordinance to the Impact Fee Administrator prior to the issuance of any such permit. If the  
2 issuance of a permit is not required for the development (e.g. golf course, park, change of  
3 use, etc), then the person seeking to engage in the development shall pay each impact fee  
4 required by this ordinance prior to the occurrence of any one of the following events,  
5 whichever occurs first:

6 (1) Completion of any connection to the City's water and wastewater  
7 systems; or

8 (2) The date when any part of the development opens for business or  
9 goes into use.

10 No such permits shall be issued, no such connections shall be made, and no  
11 such other development shall be opened for business or allowed to go into use until each  
12 impact fee require by this ordinance has been paid.

13 All impact fees paid by a person pursuant to this ordinance shall be promptly  
14 deposited in the appropriate impact fee accounts described in Section 27.82.070.

15 (c) Calculation of Impact Fees from Impact Fee Schedules.

16 (1) Unless the person applying for any of the permits for a development  
17 listed in subsection (a) above or the person seeking to engage in a development for which  
18 no permit is required requests that the City determine the amount of such fee pursuant to  
19 an independent fee calculation study, the Impact Fee Administrator shall determine the  
20 amount of each required impact fee through the use of impact fee schedules to be set by  
21 resolution of the City Council.

1           (2)     If the type of development or meter size that a permit is applied for or  
2     the type of development to be engaged in for which no permit is required is not listed in a  
3     schedule, then the Impact Fee Administrator shall use the fee applicable to the most nearly  
4     comparable type, land use, or meter size in such schedule. In the case of arterial street  
5     impact fees, decisions about what use is most nearly comparable shall be guided by the  
6     most recent edition of "Trip Generation" and the companion "Trip Generation Manual"  
7     prepared by the Institute of Transportation Engineers, or if such publications are no longer  
8     available, then by a similar publication.

9           (3)     If the type of development or meter size that a permit is applied for or  
10    the type of development to be engaged in for which no permit is required includes a mix  
11    of those uses or meter sizes listed in a schedule, then the fee shall be determined by  
12    adding up the fees that would be payable for each use or meter size if it was a free-  
13    standing use pursuant to such schedule.

14          (4)     If a person is applying for a permit to allow a change of use or meter  
15    size or for the expansion, redevelopment, or modification of an existing development, the  
16    fee shall be based on the net increase in the fee for the new use or meter size as  
17    compared to the previous use, provided that the previous use was in operation within  
18    fifteen years prior to the first building permit for the redevelopment.

19          (5)     If no use was in operation on the site within the last fifteen years, the  
20    redevelopment shall be treated the same as a new development.

21          (6)     If the proposed change of use, meter size, expansion, redevelopment,  
22    or modification results in a net decrease in the fee for the new use or development as



1 compared to the previous use, meter size, or development, there shall be no refund of or  
2 credit for impact fees previously paid.

3 (7) In the case of a demolition or termination of an existing use or  
4 structure, the impact fee for future redevelopment of that site shall be based upon the net  
5 increase in the impact fee for the new or proposed land use as compared to the previous  
6 use. Credit for the prior use shall not be transferable to another location, except that if the  
7 old location was acquired by the City for use for an Impact Fee Facility and will not be  
8 redeveloped, the City will receive a credit against future impact fees equal to the impact  
9 fee that would have been assessed against the relocated use which may be transferred  
10 by the City to a community redevelopment project in another location within the same  
11 benefit area..

12 (8) In the case of a relocation of a use, an impact fee shall be assessed  
13 to the relocated use at its new location. Credits from the old location shall not be  
14 transferable to the new location. Future redevelopment of the old location from which the  
15 use was removed will receive a credit against the impact fee assessed equal to the impact  
16 fee that would have been assessed against the relocated use.

17 (d) Calculating Fees Through an Independent Fee Calculation Study.

18 (1) General Provisions. If in the judgment of the Impact Fee Administrator  
19 there is no comparable type, land use or meter size in such fee schedules which can be  
20 used to accurately describe the impacts resulting from any proposed development, the  
21 person applying for a permit for such development or the person seeking to engage in such  
22 development for which no permit is required shall provide to the Administrator for the

1 Administrator's review and evaluation an independent fee calculation prepared at such  
2 person's cost by a qualified professional in the preparation of an impact fee analysis. In  
3 addition, if such person elects not to have the impact fee determined according to the  
4 impact fee schedules, such person may request that the Impact Fee Administrator  
5 determine the amount of a required impact fee for the proposed development by reference  
6 to an independent fee calculation study prepared at such person's cost by a qualified  
7 professional in the preparation of such analysis. Any such study shall be based on the  
8 same service standards and unit costs for facilities used in the Impact Fee Study, and shall  
9 document the methodologies and assumptions used. Any independent fee calculation  
10 study submitted by such person may be accepted, rejected, or accepted with modifications  
11 by the impact Fee Administrator as the basis for calculating an impact fee. If such study  
12 is accepted or accepted with modifications as a more accurate measure of the demand for  
13 Impact Fee Facilities created by the proposed development than the applicable impact fee  
14 shown in the appropriate impact fee schedules, then the impact fee due under this  
15 ordinance shall be calculated according to such study.

16 (2) Additional Requirements for Arterial Street Impact Fee Studies. In  
17 addition to those requirements listed in subsection (d)(1) above, any independent fee  
18 calculation study submitted by a person for purposes of calculating an arterial street impact  
19 fee shall show the traffic engineering and economic methodologies and assumptions used,  
20 including but not limited to the following forms of documentation:

21 (i) Such studies must include documentation of trip generation  
22 rates, trip lengths, the percentage of trips from the site that represent net additions to

1 current trips from the site (if any), the percentage of trips that are new trips as opposed to  
2 pass-by or diverted-link trips, and any other trip data for the proposed land use.

3 (ii) Such studies must include documentation of any special factors  
4 that such person believes will reduce the traffic volumes otherwise attributable to the  
5 proposed land uses.

6 Section 6. That Title 27 of the Lincoln Municipal Code be amended by  
7 adding a new section numbered 27.82.060 to read as follows:

8 **27.82.060 Exemptions From Impact Fees.**

9 (a) Exemptions From All Impact Fees. The following types of development shall  
10 be exempted from payment of all impact fees otherwise due pursuant to this ordinance:

11 (1) Replacement of a destroyed or partially destroyed residential building  
12 or structure with a new building or structure of the same use, and with the same number  
13 of residential units, provided that the rebuilding or replacement occurs no later than fifteen  
14 years after the demolition or removal of the previous structure.

15 (2) Replacement of a destroyed or partially destroyed nonresidential  
16 building or structure with a new building or structure of the same gross floor area and use,  
17 provided that the rebuilding or replacement occurs no later than fifteen years after the  
18 demolition or removal of the previous structure.

19 (3) Installation or replacement of a mobile home on a lot or site where all  
20 impact fees for such lot or site have previously been paid pursuant to this ordinance or  
21 where a mobile home legally existed on such lot or site on prior to the effective date of this  
22 ordinance.

1           (4) Room additions, remodeling, rehabilitation or other improvements to  
2 an existing structure, provided that there is no increase in the number of dwelling units for  
3 residential use or in the amount of gross square footage for nonresidential use.

4           (5) Construction pursuant to a building permit issued prior to the effective  
5 date of this ordinance, provided the construction proceeds according to the terms of the  
6 building permit. If said building permit expires, application for a new building permit shall  
7 be treated the same as a new development.

8           (6) Low Income Owner-Occupied Housing.

9           (i) An Owner-Occupied unit which is sold to a household whose  
10 income is 60% or less of the area medium gross income adjusted for a household size  
11 shall be entitled to a 100% exemption from all Impact Fees.

12           (ii) An Owner-Occupied unit which is sold to a household whose  
13 income is more than 60% but is 80% or less of the area medium gross income adjusted  
14 for a household size shall be entitled to a 50% exemption from all Impact Fees.

15           (7) Low Income Rental Housing located outside of a low or moderate  
16 income area.

17           (i) A Tenant-Occupied unit which is restricted to rental to a  
18 household whose income is 60% or less of the area medium gross income adjusted for  
19 household size shall be entitled to a 100% exemption from all Impact Fees.

20           (ii) A Tenant-Occupied unit which is restricted to rental to a  
21 household whose income is 80% or less of the area medium gross income adjusted for a  
22 household size shall be entitled to a 50% exemption from all Impact Fees.

1 (b) Exemptions From Specific Impact Fees. The following types of projects shall  
2 be exempted from the following types of impact fees:

3 (1) Development, pursuant to a written annexation agreement between  
4 the City and a developer which was executed prior to June 1, 2002, and which addressed  
5 the  
6 additional demand for Impact Fee Facilities created by such development shall be exempt  
7 from the impact fee charged for those specific types of Impact Fee Facilities the Developer  
8 agreed to finance or construct in whole or in part.

9 (2) Development within the Downtown Antelope Valley Exclusion Area  
10 shall be exempt from the Arterial Street impact fee.

11 (3) No water or wastewater impact fee shall be charged for the oversizing  
12 of a water meter required for the development in order to install fire protection systems or  
13 lines.

14 (4) Any separate water meter installed for irrigation purposes only shall  
15 not be included in the calculation of the wastewater impact fee.

16 (5) Other types of development shall be exempted from payment of  
17 specific impact fees otherwise due pursuant to this ordinance if the person applying for a  
18 permit for such development or the person seeking to engage in such development for  
19 which no permit is required can demonstrate that the proposed land use and development  
20 will produce n additional demand for a specific Impact Fee Facility beyond what was  
21 generated from such site prior to the proposed development, using an average cost (not  
22 marginal cost) methodology. The fact that a proposed development has direct access to,

1 or is located close to, an existing facility of the type covered by an impact fee, shall not by  
2 itself be evidence that the proposed development will have no impact on the need for  
3 Impact Fee Facilities of the type covered by the impact fee.

4 (c) Request for Exemption Required. If a permit is required for the proposed  
5 development, any such claim for exemption must be made no later than the date of the  
6 application for the first permit for the proposed development except that a claim of  
7 exemption for Low-Income Owner-Occupied Housing or Low Income Rental Housing may  
8 be made no later than the date the housing is first occupied. If the issuance of a permit is  
9 not required for the development, then any such claim for exemption must be made no  
10 later than the occurrence of any one of the following events, whichever occurs first:

11 (1) Completion of any connection to the City's water and wastewater  
12 systems; or

13 (2) The date when any part of the development opens for business or  
14 goes into use.

15 Any claim for exemption not made at or before that time provided above shall  
16 be deemed waived.

17 (d) Determination of Validity. The Impact Fee Administrator shall determine the  
18 validity of any claim for exemption pursuant to the criteria set forth in this ordinance. An  
19 exemption for Low-Income Owner-Occupied Housing or Low Income Rental Housing shall  
20 not become valid until after the City receives verification that such housing is occupied by  
21 an eligible household.

1 (e) Funding. The proportionate share of any Impact Fee Facility or Impact Fee  
2 Facility Improvement cost directly related to the exemptions granted pursuant to  
3 Subsections (a) and (b) above shall be funded from a revenue source other than impact  
4 fees.

5 Section 7. That Title 27 of the Lincoln Municipal Code be amended by  
6 adding a new section numbered 27.82.070 to read as follows:

7 **27.82.070 Impact Fee Funds.**

8 (a) Creation of Benefit Districts. Impact fees shall be spent only within the  
9 benefit district in which they were collected, except that water impact fees may be spent  
10 for water impact fee facility improvements outside the corporate limits of the City which  
11 benefit the district in which they were collected. There are hereby created seven benefit  
12 districts, as follows:

13 (1) Water Impact Fee Benefit District shall be the area served by the  
14 Lincoln water system;

15 (2) Wastewater Impact Fee Benefit District shall be the area served by the  
16 Lincoln wastewater system;

17 (3) Northwest Arterial Street Impact Fee Benefit District shall be the  
18 incorporated area of the City of Lincoln located north of the centerline of O Street and west  
19 of the centerline of 27th Street, except for that portion of the Downtown Antelope Valley  
20 Exclusion Area located within said boundaries;

1 (4) Northeast Arterial Street Impact Fee Benefit District shall be the  
2 incorporated area of the City of Lincoln located north of the centerline of O Street and east  
3 of the centerline of 27th Street;

4 (5) Southeast Arterial Street Impact Fee Benefit District shall be the  
5 incorporated area of the City of Lincoln located south of the centerline of O Street and east  
6 of the centerline of 27th Street;

7 (6) Southwest Arterial Street Impact Fee Benefit District shall be the  
8 incorporated area of the City of Lincoln located south of the centerline of O Street and west  
9 of the centerline of 27th Street, except for that portion of the Downtown Antelope Valley  
10 Exclusion Area located within said boundaries;

11 (7) Northwest Neighborhood Parks and Trails Impact Fee Benefit District  
12 shall be the incorporated area of the City of Lincoln located north of the centerline of O  
13 Street and west of the centerline of 27th Street;

14 (8) Northeast Neighborhood Parks and Trails Impact Fee Benefit District  
15 shall be the incorporated area of the City of Lincoln located north of the centerline of O  
16 Street and east of the centerline of 27th Street;

17 (9) Southeast Neighborhood Parks and Trails Impact Fee Benefit District  
18 shall be the incorporated area of the City of Lincoln located south of the centerline of O  
19 Street and east of the centerline of 27th Street; and

20 (10) Southwest Neighborhood Parks and Trails Impact Fee Benefit District  
21 shall be the incorporated area of the City of Lincoln located south of the centerline of O  
22 Street and west of the centerline of 27th Street.



1 (b) Creation of Impact Fee Fund. An Impact Fee Fund is hereby created and  
2 shall include the following impact fee accounts as interest bearing accounts distinct from  
3 the General Fund of the City:

- 4 (1) Water Impact Fee Account;  
5 (2) Wastewater Impact Fee Account;  
6 (3) Northwest Arterial Street Impact Fee Account;  
7 (4) Northeast Arterial Street Impact Fee Account;  
8 (5) Southeast Arterial Street Impact Fee Account;  
9 (6) Southwest Arterial Street Impact Fee Account;  
10 (7) Northwest Neighborhood Parks and Trails Impact Fee Account;  
11 (8) Northeast Neighborhood Parks and Trails Impact Fee Account;  
12 (9) Southeast Neighborhood Parks and Trails Impact Fee Account; and  
13 (10) Southwest Neighborhood Parks and Trails Impact Fee Account.

14 (c) Monies in Impact Fee Account. Each such account shall contain only those  
15 impact fees collected pursuant to this ordinance for the types of Impact Fee Facilities  
16 reflected in the title of the account plus any interest which may accrue from time to time on  
17 such amounts.

18 (d) Use of Impact Fee Account. The monies in the each impact fee account shall  
19 be used only:

- 20 (1) To acquire land for and/or acquire or construct Impact Fee Facilities  
21 or Impact Fee Facility Improvements of the type reflected in the title of the account and in  
22 the location specified in Section 27.82.070(a); or

1                   (2) As described in Section 27.82.080 (Refunds) or as described in  
2                   Section 27.82.090 (Post-Ordinance Agreements), or as described in Section 27.82.100  
3                   (Pre-Ordinance Reimbursements), or

4                   (3) To pay consultant fees to update the impact fees.

5                   Section 8. That Title 27 of the Lincoln Municipal Code be amended by  
6                   adding a new section numbered 27.82.080 to read as follows:

7                   **27.82.080 Refunds of Impact Fees Paid.**

8                   (a) Passage of Time. Any monies in any impact fee account that have not been  
9                   spent or encumbered within ten years after the date on which such fee was paid shall,  
10                  upon application to the Impact Fee Administrator by the fee payor, be returned to such  
11                  person with interest since the date of payment at the rate earned by the City on the fees.  
12                  Fees shall be deemed to be spent on the basis that the first fee collected shall be the first  
13                  fee spent. Within one month of the end of the ten-year period from the date on which the  
14                  unspent impact fee was paid, the Impact Fee Administrator shall notify the fee payor of  
15                  eligibility for a refund at the address listed with the Impact Fee Administrator. In order to  
16                  receive such refund, the fee payor shall be required to submit an application for such  
17                  refund within six months after the expiration of such ten-year period. Any monies in an  
18                  impact fee account for which no application for a refund has been timely made shall be  
19                  retained by the City and expended on the types of Impact Fee Facilities reflected in the title  
20                  of the account without further limitation as to time of expenditure.

21                  (b) Expiration of Permit. If a person has paid an impact fee required by this  
22                  ordinance and has obtained a building permit or any other permit for a development or

1 extensions thereto, and the permit or extension for which the fee was paid later expires  
2 without the possibility of further extension, and the development activity for which the  
3 impact fee was imposed did not occur and no impact has resulted, then such fee payor  
4 shall be entitled to a refund of the fee paid, with interest. In order to be eligible to receive  
5 such refund, such fee payor shall be required to submit an application for such refund  
6 within thirty days after the expiration of the permit or extension for which the fee was paid.

7 (c) No Refund for Altered Development. After an impact fee has been paid  
8 pursuant to this ordinance, no refund of any part of such fee shall be made if the  
9 development for which the fee was paid is later demolished, destroyed, or is altered,  
10 reconstructed, or reconfigured so as to reduce the size of the development, the number  
11 of units in the development, or the amount of traffic generated by the development.

12 (d) Notice to Fee Payor. At the time of payment of any impact fee under this  
13 ordinance, the Impact Fee Administrator shall provide the person paying such fee with  
14 written notice of those circumstances under which refunds of such fees will be made.  
15 Failure to deliver such written notice shall not invalidate any collection of any impact fee  
16 under this ordinance.

17 Section 9. That Title 27 of the Lincoln Municipal Code be amended by  
18 adding a new section numbered 27.82.090 to read as follows:

19 **27.82.090 Post-Ordinance Developer Agreements Regarding Impact Fee Facilities.**

20 (a) General Provision. After the effective date of this ordinance where a  
21 proposed development includes or requires the construction of Impact Fee Facilities in  
22 connection with such development, the City and developer may agree in writing to have

1 the developer participate in the financing or construction of part or all of such Impact Fee  
2 Facilities.

3 Such agreement may provide for future cash reimbursements to the  
4 developer for the developer's participation in the financing or construction of the Impact  
5 Fee Facilities consistent with the following requirements:

6 (1) Reimbursement for each type of Impact Fee Facility financed or  
7 constructed by the developer shall be paid from and shall not exceed the impact fees  
8 which would become due and payable under this ordinance within the proposed  
9 development for that same type of Impact Fee Facility.

10 (2) No reimbursement shall be paid from impact fees received for a  
11 different type of Impact Fee Facility or against any other monies due to the City from such  
12 development and the reimbursement shall not constitute general liability of the City.

13 (3) The reimbursement shall be calculated and documented as follows:

14 (i) The value of land dedicated or donated shall, at such person's  
15 option, be valued at (a) 100% of the most recent assessed value for such land as shown  
16 in the records of the County Assessor, or (b) the land's fair market value based on its  
17 appraised land value on the date of transfer of ownership to the City, as determined by a  
18 certified appraiser who was selected and paid for by such person, and who used generally  
19 accepted appraisal techniques. If the City disagrees with the appraised value, the Impact  
20 Fee Administrator may engage another appraiser at the City's expense, and the value shall  
21 be an amount equal to the average of the two appraisals. If either party rejects the  
22 average of the two appraisals, a third appraisal shall be obtained, with the cost of such

1 third appraisal being shared equally by such person and the City. The third appraiser shall  
2 be selected by the first two appraisers, and the third appraisal shall be binding on both  
3 parties.

4 (ii) If only a portion of a parcel of land is dedicated or donated, the  
5 value of such land shall, at such person's option, be valued at (a) 100% of the land's  
6 assessed value for such land based upon the most recent assessed value for the parent  
7 parcel as shown in the records of the County Assessor, or (b) the land's fair market value  
8 based on the appraised land value of the parent parcel on the date of transfer of ownership  
9 to the City, as determined by a certified appraiser who was selected and paid for by such  
10 person, and who used generally accepted appraisal techniques. If the City disagrees with  
11 the appraised value, the Impact Fee Administrator may engage another appraiser at the  
12 City's expense, and the value shall be an amount equal to the average of the two  
13 appraisals. If either party rejects the average of the two appraisals, a third appraisal shall  
14 be obtained, with the cost of such third appraisal being shared equally by such person and  
15 the City. The third appraiser shall be selected by the first two appraisers, and the third  
16 appraisal shall be binding on both parties.

17 (iii) The value of Impact Fee Facilities constructed by the developer  
18 shall be based upon the actual cost of construction as verified by receipts submitted by the  
19 developer.

20 (4) In the event the impact fee schedule is revised to account for inflation,  
21 increased construction costs or other factors prior to payment of all the reimbursement, the  
22 remaining reimbursement shall be adjusted to reflect such changed circumstances.

1           (5)    The reimbursement shall only be paid to the developer who  
2 participated in the financing or construction of part or all of the Impact Fee Facilities or the  
3 developer's legal successor in interest with an express right or entitlement to any  
4 reimbursement which has been expressly transferred or assigned to the successor in  
5 interest.

6           (6)    In the absence of an express transfer or assignment of the right or  
7 entitlement to the reimbursement, the right or entitlement shall be deemed "not to run with  
8 the land."

9           Section 10. That Title 27 of the Lincoln Municipal Code be amended by  
10 adding a new section numbered 27.82.100 to read as follows:

11   **27.82.100    Developer Reimbursement for Pre-Ordinance Participation in Financing**  
12   **or Construction of Impact Fee Facilities.**

13           (a)    General Provisions. After the effective date of this ordinance where a pre-  
14 ordinance development not subject to a written mitigation agreement included or required  
15 the participation by the developer in the financing or construction of Impact Fee Facilities,  
16 said developer or the developer's legal successor in interest with the right or entitlement  
17 to a reimbursement which has been expressly transferred or assigned to the successor in  
18 interest will be entitled to a cash reimbursement for the present value of land dedicated or  
19 donated and/or the present value of the Impact Fee Facilities constructed by said  
20 developer as provided in (b) below.

21           (b)    Reimbursement shall be calculated as follows:

1           (1)    No reimbursement shall be provided under this section for dedications,  
2   contributions, payments or construction made more than fifteen (15) years prior to the  
3   effective date of this ordinance.

4           (2)    The present value of land dedicated or donated shall, at such person's  
5   option, be valued at (a) 100% of the most recent assessed value for such land as shown  
6   in the records of the County Assessor, or (b) the land's present fair market value based on  
7   its appraised land value on the date of transfer of ownership to the City, as determined by  
8   a certified appraiser who was selected and paid for by such person, and who used  
9   generally accepted appraisal techniques. If the City disagrees with the appraised value,  
10   the Impact Fee Administrator may engage another appraiser at the City's expense, and the  
11   value shall be an amount equal to the average of the two appraisals. If either party rejects  
12   the average of the two appraisals, a third appraisal shall be obtained, with the cost of such  
13   third appraisal being shared equally by such person and the City. The third appraiser shall  
14   be selected by the first two appraisers, and the third appraisal shall be binding on both  
15   parties.

16          (3)    If only a portion of a parcel of land is dedicated or donated, the present  
17   value of such land shall, at such person's option, be valued at (a) 100% of the land's  
18   assessed value for such land based upon the most recent assessed value for the parent  
19   parcel as shown in the records of the County Assessor, or (b) the land's present fair market  
20   value based on the appraised land value of the parent parcel on the date of transfer of  
21   ownership to the City, as determined by a certified appraiser who was selected and paid  
22   for by such person, and who used generally accepted appraisal techniques. If the City

1 disagrees with the appraised value, the Impact Fee Administrator may engage another  
2 appraiser at the City's expense, and the value shall be an amount equal to the average of  
3 the two appraisals. If either party rejects the average of the two appraisals, a third  
4 appraisal shall be obtained, with the cost of such third appraisal being shared equally by  
5 such person and the City. The third appraiser shall be selected by the first two appraisers,  
6 and the third appraisal shall be binding on both parties.

7 (4) The amount of the reimbursement for a contribution payment or  
8 construction made to an Impact Fee Facility prior to the effective date of the ordinance  
9 shall be the present value of the contribution payment or construction, less the total  
10 amount of impact fees for the same type of Impact Fee Facility that would have been due  
11 and payable for development already undertaken within the whole development had that  
12 development been subject to the impact fees imposed pursuant to Section 27.82.050.

13 (c) Procedure. No reimbursement shall be provided unless the developer who  
14 participated in the financing or construction of the Impact Fee Facilities or the developer's  
15 legal successor in interest makes application on forms provided by the City for the  
16 reimbursement within one year following the effective date of his ordinance or such  
17 developer's claim for the reimbursement shall be deemed waived. The application for  
18 reimbursement must contain a statement under oath of the facts that qualify such  
19 developer or the developer's legal successor in interest to receive a reimbursement, and  
20 must be accompanied by documents evidencing the developer, at the request and demand  
21 of the City, dedicated specific parcels of land for specific Impact Fee Facilities, or  
22 contributed to the cost of constructing specific Impact Fee Facilities, or constructed specific



1 Impact Fee Facilities in accordance with all applicable state or city design and construction  
2 standards.

3 (d) Payment of the Reimbursement. Reimbursements for each type of Impact  
4 Fee Facility shall be paid from and shall not exceed the impact fees which become due and  
5 payable under this ordinance within the development for that same type of Impact Fee  
6 Facility or against any other monies due to the City from such development and the  
7 reimbursement shall not constitute a general liability of the City.

8 Section 11. That Title 27 of the Lincoln Municipal Code be amended by  
9 adding a new section numbered 27.82.110 to read as follows:

10 **27.82.110 Miscellaneous Provisions.**

11 (a) Interest. Interest earned on monies in any impact fee account shall be  
12 considered part of such account, and shall be subject to the same restrictions on use  
13 applicable to the impact fees deposited in such account.

14 (b) First-In/First-Out Accounting. Monies in each impact fee account shall be  
15 considered to be spent in the order collected, on a first-in/first-out basis.

16 (c) No Maintenance. No monies from any impact fee account shall be spent for  
17 periodic or routine maintenance of any facility of any type.

18 (d) No Restriction on Development Conditions. Nothing in this ordinance shall  
19 restrict the City from requiring a person to construct reasonable project improvements  
20 required to serve such person's project, whether or not such improvements are of a type  
21 for which reimbursements are available under Section 27.82.090.

1 (e) Records. The Impact Fee Administrator shall maintain accurate records of  
2 the impact fees paid, including the name of the person paying such fees, the project for  
3 which the fees were paid, the date of payment of each fee, the amounts received in  
4 payment for each fee, and any other matters that the Impact Fee Administrator deems  
5 appropriate or necessary to the accurate accounting of such fees, and such records shall  
6 be available for review by the public during City business hours.

7 (f) Assignment of Impact Fee Account Monies. The approved Capital  
8 Improvement Program which includes any Impact Fee Facilities scheduled for construction  
9 shall assign monies to fund in whole or in part such Impact Fee Facilities from the Impact  
10 Fee Fund Account of the type for which the fees in that account were paid. Any monies,  
11 including any accrued interest, not assigned to specific projects within such capital  
12 improvements program and not expended pursuant to Section 27.82.080 (Refunds) or  
13 27.82.090 (Reimbursements) shall be retained in the same impact fee account until the  
14 next fiscal year.

15 (g) Administrative Costs. The City shall be entitled to collect an additional  
16 charge of not more than two percent of each impact fee collected as payment for the  
17 expenses of collecting the fee and administering this ordinance. In the case of refunds of  
18 impact fees under Section 27.82.080, or reimbursements under Sections 27.82.090 and  
19 27.82.100, the City shall be entitled to retain not more than two percent of the impact fee  
20 payment made by the applicant or the reimbursement due to the applicant as payment for  
21 the expenses of processing the refund or reimbursement request.

1           (h)     Mistake or Misrepresentation. If an impact fee has been calculated and paid  
2     based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid  
3     by a person shall be refunded by the City to such person within thirty days after the City's  
4     acceptance of the recalculated amount, with interest since the date of such overpayment  
5     at the rate earned by the City on the funds. Any amounts underpaid by such person shall  
6     be paid to the City within thirty days after the Impact Fee Administrator's acceptance of the  
7     recalculated amount, with interest since the date of such underpayment at the rate then  
8     earned by the City on its impact fee funds. In the case of an underpayment to the City, the  
9     City shall not issue any additional permits or approvals for the project for which the impact  
10    fee was previously underpaid until such underpayment is corrected, and if amounts owed  
11    to the City are not paid within such thirty-day period, the City may also repeal any permits  
12    issued in reliance on the previous payment of such impact fee and refund such fee to the  
13    then current owner of the land.

14           (i)     Discretion to Reduce Impact Fees. In order to promote the economic  
15    development of the City or the public health, safety, and general welfare of its residents,  
16    the City Council may agree to pay some or all of the impact fees imposed on a proposed  
17    development or redevelopment from other funds of the City that are not restricted to other  
18    uses. Any such decision to pay impact fees on behalf of a proposed development shall be  
19    at the discretion of the City Council and shall be made pursuant to goals and objectives  
20    previously expressed by the City Council to promote such development.

21           (j)     Appeals. Any determination made by any official of the City charged with the  
22    administration of any part of this ordinance may be appealed by the aggrieved party to the

1 City Council by filing (1) a written Notice of Appeal on a form provided by the City, and (2)  
2 a written explanation of why the appellant feels that a determination was in error. Appeals  
3 must be filed with the City Clerk within ten days after the determination for which the  
4 appeal is being filed. At the regular meeting following the filing of the appeal, the City  
5 Council shall fix a time and place for hearing the appeal, and the City Clerk shall mail  
6 notice of the hearing to the appellant at the address given in the Notice of Appeal. The  
7 hearing shall be conducted at the time and place stated in such notice given by the City  
8 Council. In an appeal of an impact fee, the Council shall not waive the fees, although the  
9 fees may be reduced pursuant to subsection (i) above or may be reduced upon a finding  
10 that the impact fee was incorrectly calculated, or that unusual circumstances of the  
11 development demonstrate that application of the fee to the development would be unfair  
12 or unjust. The determination of the City Council shall be final.

13 (k) Periodic Review. The impact fees and the administrative procedures  
14 established by this ordinance shall be reviewed at least once every three fiscal years to  
15 ensure that:

16 (1) The demand and cost assumptions underlying such fees are still valid,  
17 (2) The resulting fees do not exceed the actual cost of constructing Impact  
18 Fee Facilities of the type for which the fee was paid and that are required to serve new  
19 development,

20 (3) The monies collected or to be collected in each impact fee fund have  
21 been or are expected to be spent for Impact Fee Facilities of the type for which such fees  
22 were paid, and

1           (4) That such Impact Fee Facilities will benefit those developments for  
2 which the fees were paid.

3           (l) Adjustments for Inflation. Beginning on January 1, 2008, and on January 1  
4 of each following year unless and until the impact fee schedules are otherwise revised or  
5 replaced by City Council, each fee amount set forth in each schedule shall be adjusted to  
6 reflect the effects of inflation on those costs set forth in the Impact Fee Study by multiplying  
7 such amount by a fraction, the numerator of which is the U.S. Consumer Price Index for  
8 All Items for the most recent period for which figures are available, and the denominator  
9 of which is U.S. Consumer Price Index for All Items for the period one year prior to the  
10 period reflected in the numerator. Such adjustments in such fees shall become effective  
11 upon approval by resolution of the City Council.

12           (m) Violations. Violation of this ordinance shall be a misdemeanor and shall be  
13 subject to those remedies provided in Section 27.81.070. Knowingly furnishing false  
14 information to any official of the City charged with the administration of this ordinance on  
15 any matter relating to the administration of this ordinance, including without limitation the  
16 furnishing of false information regarding the expected size, use, or traffic impacts from a  
17 proposed development, shall be a violation of this ordinance. In addition to or in lieu of any  
18 criminal prosecution, the City or any person applying for a permit of the types described  
19 in Section 27.82.050(a) or any person seeking to engage in a development for which no  
20 permit is requested shall have the right to sue in civil court to enforce the provisions of this  
21 ordinance.

22           Section 14. That if any section, subsection, sentence, clause, phrase, part  
23 or portion of this ordinance, including those parts adopted by reference, is for any reason

1 held to be invalid or unconstitutional by any court or agency of competent jurisdiction, such  
2 decision shall not affect the validity of the remaining portions of this ordinance.

3 Section 15. That Sections 1 through 13 hereof be codified in the Lincoln  
4 Municipal Code as Chapter 27.82, Impact Fees.

5 Section 16. That the Downtown/Antelope Valley Exclusion Area Map  
6 attached hereto marked as Exhibit 1 is hereby adopted and incorporated herein by  
7 reference.

8 Section 17. That this ordinance shall be in full force and effect as of  
9 \_\_\_\_\_, 2002, after its passage and publication according to law.

Introduced by:

\_\_\_\_\_  
Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2002:

\_\_\_\_\_  
Mayor



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## ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Section 26.23.040 of the Lincoln Municipal Code  
 2 to amend Table 26.23.040 to modify the reference to the Comprehensive Plan and to increase  
 3 the minimum right-of-way width for bikeways from a 14-foot easement to a 20-foot easement;  
 4 amending Section 26.23.160 of the Lincoln Municipal Code to require a dedication of land  
 5 or impact fee for neighborhood parks and trails; and repealing Sections 26.23.040 26.23.160  
 6 of the Lincoln Municipal Code as hitherto existing.

7 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

8 Section 1. That Section 26.23.040 of the Lincoln Municipal Code be amended  
 9 to read as follows:

10 **26.23.040 Street and Other Public Way Widths.**

11 (a) The width of all rights-of-way shall conform to the widths prescribed herein and  
 12 shall be determined pursuant to the comprehensive plan.

13 (b) The minimum right-of-way widths shall be as follows:

Classification	Width
15 Urban major streets ..... 16 (Streets and roads shown on the future 17 urban street and road network map in 18 the comprehensive plan).	80 feet (except when more right-of-way is shown on the anticipated right-of-way for street and road project implementation map or described for such streets in the comprehensive plan or less right-of-way is required on the building line map.)



1 Nonurban major streets . . . . . 100 feet  
2 (Streets and roads shown on future  
3 county street and road network map in  
4 the comprehensive plan).

5 Collector streets . . . . . 72 feet

6 Local streets:

7 Commercial, business, or industrial  
8 zoning district . . . . . 66 or 72 feet  
9 (In accordance with design standards)

10 Residential . . . . . 60 feet

11 Cul-de-sacs:

12 Residential . . . . . 60-foot radius

14 Commercial, business, or industrial . . . . . 66- or 72-foot radius  
15 (In accordance with design standards)

16 Alleys . . . . . 20 feet

17 Pedestrian ways . . . . . 5-foot easement for the sidewalk

18 Bikeways . . . . . ~~14-foot easement~~  
19 20-foot easement

20 Section 2. That Section 26.23.160 of the Lincoln Municipal Code be amended  
21 to read as follows:

22 **26.23.160 Parks, Fire Stations, Libraries, Bikeways, Easement Along Streams, and Other**  
23 **Public Areas.**

24 (a) In subdividing property, consideration shall be given to suitable areas for  
25 schools, parks, playgrounds, fire stations, libraries, and other common areas for public use in  
26 conformance with the comprehensive plan.

27 (b) All subdivisions for residential development shall provide for the neighborhood  
28 park land needs of its future residents by dedicating suitable land for neighborhood parks.

1 paying the impact fees for neighborhood parks and trails pursuant to Chapter 27.82, Impact  
2 Fees, or by a combination of the two methods.

3 (1) Whether the neighborhood park land need will be satisfied by the  
4 dedication of land, payment of the impact fee, or some combination of the two methods shall  
5 be at the sole discretion of the City.

6 (2) The maximum amount of land that can be required to be dedicated per  
7 unit for neighborhood parks is as follows:

<u>Housing Type</u>	<u>Acres/Unit</u>
<u>Single-Family Detached</u>	<u>0.00659</u>
<u>Townhouse</u>	<u>0.00554</u>
<u>Duplex</u>	<u>0.00488</u>
<u>Multi-Family</u>	<u>0.00389</u>
<u>Mobile Home Court (per pad site)</u>	<u>0.00560</u>

14 (3) The area to be dedicated shall be shown on the preliminary plat and final  
15 plat.

16 Section 3. That Sections 26.23.040 and 26.23.160 of the Lincoln Municipal  
17 Code as hitherto existing be and the same are hereby repealed.

18 Section 4. That this ordinance shall take effect and be in force from and after  
19 its passage and publication according to law.

Introduced by:

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Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Staff Review Completed:

\_\_\_\_\_  
Administrative Assistant

Approved this \_\_\_ day of \_\_\_\_\_, 2002:

\_\_\_\_\_  
Mayor